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EX PARTE OR LATE FILED

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Justin L. Faulb
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August 13, 2012

AUG 13 2012

Federal Communications Commission
Office of the Secretary

Ex Parte

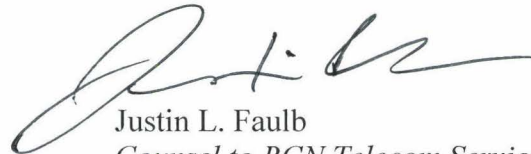
Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Dear Ms. Dortch:

RCN Telecom Services, LLC ("RCN"), pursuant to Sections 0.457 and 0.459 of the Commission's rules¹ respectfully requests confidential treatment in connection with the attached *ex parte* filing. RCN files this *ex parte* in response to a question from Randy Clarke during a July 23, 2012 *ex parte* meeting between RCN and Randy Clarke, Doug Slotten, and Rhonda Lien of the Wireline Competition Bureau.²

Consistent with 47 C.F.R. § 0.459(d)(1), RCN requests notification if release of the information subject to this request is requested pursuant to the FOIA or otherwise. If confidential treatment is denied, RCN respectfully requests that the confidential material be returned to the undersigned.

Respectfully submitted,



Justin L. Faulb
Counsel to RCN Telecom Services, LLC

¹ 47 C.F.R. §§ 0.457; 0.459.

² Letter to Marlene H. Dortch, Secretary, FCC, from James C. Falvey, Eckert Seamans Cherin & Mellott, LLC, WC Docket 10-90, *et al.*, July 23, 2012.

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REDACTED

Ex Parte

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Re: *In the Matter of Connect American Fund, et al.*, Further Notice of Proposed Rulemaking on IP-to-IP Interconnection Issues, WC Docket No. 10-90; GN Docket No. 09-51; WC Docket No. 07-135; WC Docket No. 05-337; CC Docket No. 01-92; CC Docket No. 96-45; WC Docket No. 03-109; WT Docket No. 10-208

REDACTED

Dear Ms. Dortch:

RCN Telecom Services, LLC ("RCN"), pursuant to Sections 0.457 and 0.459 of the Commission's rules¹ respectfully requests confidential treatment in connection with RCN's above referenced *ex parte* filing. RCN provides the following information in response to a question from Randy Clarke during a July 23, 2012 *ex parte* meeting between RCN and Randy Clarke, Doug Slotten, and Rhonda Lien of the Wireline Competition Bureau.²

During the meeting, RCN asserted that the new intrastate access revenue rules have resulted in an anomaly where RCN's intrastate access rates have proven to be significantly lower than Verizon's. Mr. Clarke asked for specific information regarding the revenue and cost impact of the new intrastate access rate compensation rules to RCN. The difference in cost billed from one incumbent local exchange carrier in June 2012 is [REDACTED]. The revenue impact in June to RCN's average monthly intrastate bill compared to pre-July 1, 2012 rates is [REDACTED].

¹ 47 C.F.R. §§ 0.457; 0.459.

² Letter to Marlene H. Dortch, Secretary, FCC, from James C. Falvey, Eckert Seamans Cherin & Mellott, LLC, WC Docket 10-90, *et al.*, July 23, 2012 ("RCN *ex parte*").

Given the highly confidential financial nature of this information. RCN requests confidential treatment of this filing. Please see below for the required statement pursuant to 47 C.F.R. § 0.459(b) of the Commission's rules.

(1) Identification of the specific information for which confidential treatment is sought.

This request is limited to the highly sensitive internal revenue and cost information shared to discuss the impact of the Commission's new intrastate intercarrier compensation rules on RCN.

(2) Identification of the Commission proceeding in which the information was submitted or a description of the circumstances giving rise to the submission.

This information is provided to the Commission voluntarily as a courtesy in response to a question from Randy Clarke during a recent *ex parte* meeting between RCN and Commission staff.³

(3) Explanation of the degree to which the information is commercial or financial, or contains a trade secret or is privileged.

The individual costs incurred and revenue received by a company are financial, extremely confidential, and are not routinely released to the public.

(4) Explanation of the degree to which the information concerns a service that is subject to competition.

The information for which confidential treatment is sought concerns the intensely competitive telecommunications market. RCN is subject to constant competition from a variety of competitors who could use this information to harm RCN by gaining insight into RCN's business operations. The existence of competition and likelihood of competitive injury to RCN should this information be released should compel the Commission to withhold the information from public disclosure.⁴ Information regarding RCN's internal costs, revenue figures, and operations "would customarily be guarded from competitors."⁵ The information is not routinely available for public inspection.⁶

(5) Explanation of how disclosure of the information could result in substantial competitive harm.

³ See RCN *ex parte*.

⁴ See *CNA Financial Corp. v. Donovan*, 830 F.2d 1132, 1152 (D.C. Cir. 1987).

⁵ See 47 C.F.R. §§ 0.459(a)(4), 0.457(d)(2).

⁶ See 47 C.F.R. § 0.457(d).

Disclosure of the information would reveal the financial well-being of RCN, as well as its cost structure and the revenue from fees it charges its customers. Giving that information to RCN's competitors would harm RCN.

(6) Identification of any measures taken by the submitting party to prevent unauthorized disclosure.

Please see item 7 below.

(7) Identification of whether the information is available to the public and the extent of any previous disclosure of the information to third parties.

RCN does not make the provided information available to the public or third parties. RCN has established internal procedures to protect important and commercially sensitive financial information from release to the public or third parties. RCN does not routinely disclose this internal financial information, and RCN voluntarily provides the information at this time to the Commission in order to assist the Commission's analysis of the issue. RCN has the expectation that its sensitive financial information will be treated confidentially in accordance with Commission rules.⁷

(8) Justification of the period during which the submitting party asserts that material should not be available for public disclosure.

RCN requests that the provided information be held confidential for an infinite period. The provided information must be protected as long as competitors could be able to use the information to gain an insight into RCN's business operations. The information should be held confidential until such information is no longer deemed confidential and proprietary by RCN and is no longer subject to RCN's internal procedures for maintaining its confidentiality.

(9) Any other information that the party seeking confidential treatment believes may be useful in assessing whether its request for confidentiality should be granted.

The provided information for which confidential treatment is requested falls within Exemption 4 of the Freedom of Information Act ("FOIA"), providing a statutory basis for withholding from public inspection "matters that are trade secrets and commercial or financial information obtained from a person and privileged or confidential."⁸ The D.C. Circuit has held that similar information provided on a voluntary basis falls within FOIA exemption 4.⁹

⁷ See *Critical Mass Energy Project v. Nuclear Regulatory Comm'n*, 975 F.2d 871, 879 (D.C. Cir. 1992) (commercial information provided on a voluntary basis "is 'confidential' for the purpose of Exemption 4 if it is of a kind that would customarily not be released to the public by the person from whom it was obtained.").

⁸ 5 U.S.C. § 552(b)(4).

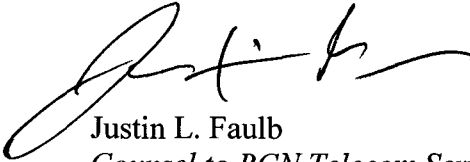
⁹ See *Critical Mass Energy Project v. Nuclear Regulatory Comm'n*, 975 F.2d 871, 879 (D.C. Cir. 1992).

Ms. Marlene H. Dortch
August 13, 2012
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REDACTED

Consistent with 47 C.F.R. § 0.459(d)(1), RCN requests notification if release of the information subject to this request is requested pursuant to the FOIA or otherwise, so that it may have an opportunity to oppose grant of any such request.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Justin L. Faulb", with a stylized flourish extending from the end.

Justin L. Faulb
Counsel to RCN Telecom Services, LLC

cc: Randy Clarke
Douglas Slotten
Rhonda Lien
Joe Kahl

Ms. Marlene H. Dortch
August 13, 2012
Page 5 of 5

REDACTED

EXHIBIT A

[REDACTED]